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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,078	11/26/2004	Roland Busses	BIG01 P498	5861

277 7590 11/06/2007
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EXAMINER

MICHENER, JOSHUA J

ART UNIT	PAPER NUMBER
3644	

MAIL DATE	DELIVERY MODE
11/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/500,078	BUSSES, ROLAND	
	Examiner Joshua J. Michener	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 July 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 20-79 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 21,22,30,41,42,49-53,61,62 and 69-73 is/are allowed.
- 6) Claim(s) 20,23-26,28,31,34-37,40,43-46,48,54-57,60,63-66,68 and 74-77 is/are rejected.
- 7) Claim(s) 27,29,32,33,38,39,47,58,59,67,78 and 79 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/31/2007 has been entered.

Allowable Subject Matter

2. The indicated allowability of claims 23-26,28,31,34-37,43-46,48,54-57,63-66,68 and 74-77 is drawn after further consideration over Applicant admitted prior art, Runion (US 5,101,766), Swartzendruber (US 4,476,811) and Van Zee et al. (US 5,097,797) rejections based on the cited reference(s) follow.

Claims 21,22,30,41,42,49-53,61,62 and 69-73 are allowed.

Claims 27,29,32,33,38,39,47,58,59,67,78 and 79 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 31 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim Objections

3. Claim 25 is objected to because of the following informalities:

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Claim 25 recites, "each engagement cam **comprises an engagement cam which...**" It is unclear what is being claimed as an engagement cam is repeated. It appears the claim language "comprises an engagement cam which" should be deleted.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 31, the phrase "similar to" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "similar to"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned

with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5: Claims 28, 48 and 68 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 8, 21, and 28 of U.S. Patent No. 7,228,817.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they encompass the exact same scope. *It is noted, the office action mailed 4/9/2007 addressed the improper Terminal Disclaimer filed 1/16/2007. Applicant failed to address this issue.*

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20, 34, 35, 40, 49, 54, 55, 60, 74, and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted Prior Art (paragraphs 0002- 0004, for purposes of reference to figures, see the corresponding patents to EP 0105571 B1 which is US equivalent Swartzendruber (US 4,476,811)) hereon (AAPA) in view of Runion (US 5,101,766).

6. Regarding claims 20, 40, and 60, AAPA discloses a device for the feeding of free-range poultry kept in a coop with at least one feed delivery pipe held above a floor of the coop and capable of being raised and lowered, the pipe having at least one aperture, comprising: a bowl

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device configured to be suspended on the feed delivery pipe, the bowl device including a feed bowl located beneath a downpipe, the bowl device further including a cupola formed from grid bars in spoke fashion, wherein the downpipe comprises an inner cylinder configured to depart from the aperture and an outer cylinder encompassing the inner cylinder, on which the bowl is suspended by the grid bars of the bowl cupola in such a way that, when the feed delivery pipe is lowered, the bowl comes to rest on the floor of the coop, wherein the outer cylinder is guided in a rotatable manner as well as in a raisable and lowerable manner on the inner cylinder, and at least one lifting stop is provided for delimiting a lifting and lowering path of the bowl (see paragraphs 0002 - 0003).

AAPA fails to teach the downpipe includes at least one rotational stop delimiting a rotational path of the outer cylinder in relation to the inner cylinder; and wherein the outer cylinder features at least one spring-elastic engagement cam.

Runion discloses at least one rotational stop (44, 54, 70, 72, 74, 76, 78) delimiting a rotational path of an outer cylinder (50, 52) in relation to an inner cylinder (figure 20) wherein the outer cylinder features at least one spring elastic engagement cam (74, 76).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify AAPA to comprise of a rotational stop in order to prevent relative rotation between the inner cylinder and outer cylinder as taught by Runion (col 5, lines 7 – 13).

7. Regarding claims 34, 35, 54, 55, 74, and 75, AAPA discloses a device for the feeding of free-range poultry kept in a coop with at least one feed delivery pipe held above a floor of the coop and capable of being raised and lowered, the pipe having at least one aperture, comprising: a bowl device configured to be suspended on the feed delivery pipe, the bowl device including a

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feed bowl located beneath a downpipe, the bowl device further including a cupola formed from grid bars in spoke fashion, wherein the downpipe comprises an inner cylinder configured to depart from the aperture and an outer cylinder encompassing the inner cylinder, on which the bowl is suspended by the grid bars of the bowl cupola in such a way that, when the feed delivery pipe is lowered, the bowl comes to rest on the floor of the coop, wherein the outer cylinder is guided in a rotatable manner as well as in a raisable and lowerable manner on the inner cylinder, and at least one lifting stop is provided for delimiting a lifting and lowering path of the bowl (see paragraphs 0002 - 0003).

AAPA fails to teach the downpipe includes at least one rotational stop delimiting a rotational path of the outer cylinder in relation to the inner cylinder; and wherein the outer cylinder features at least one spring-elastic engagement cam and the feed bowl includes a feed plate; and the feed plate includes a plate edge having connecting elements for connecting the feed plate to the bowl cupola.

Runion discloses at least one rotational stop (44, 54, 70, 72, 74, 76, 78) delimiting a rotational path of an outer cylinder (50, 52) in relation to an inner cylinder (figure 20) wherein the outer cylinder features at least one spring elastic engagement cam (74, 76) and a feed bowl includes a feed plate (18, figure 5); and the feed plate includes a plate edge (figure 2) having connecting elements (90, 86, 88, 94, 92) for connecting the feed plate to the bowl cupola wherein the connecting elements include a flap joint (groove formed by 86, 88, 90) and a retaining hinge element (94).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify AAPA to comprise of a rotational stop in order to prevent relative rotation

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between the inner cylinder and outer cylinder as taught by Runion (col 5, lines 7 – 13) and it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify AAPA to have a feed plate with connecting elements and retainer in order to provide a secure means to attach the bowl cupola to the feed plate while also provide a hinge for purposes of cleaning.

Claims 23 – 26, 43 - 46, and 63 – 66, are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA (paragraphs 0002- 0004) in view of Swartzendruber (US 4,476,811) and Runion (US 5,101,766).

8. Regarding claims 23, 24, 43, 44, 63, and 64 AAPA discloses a device for the feeding of free-range poultry kept in a coop with at least one feed delivery pipe held above a floor of the coop and capable of being raised and lowered, the pipe having at least one aperture, comprising: a bowl device configured to be suspended on the feed delivery pipe, the bowl device including a feed bowl located beneath a downpipe, the bowl device further including a cupola formed from grid bars in spoke fashion, wherein the downpipe comprises an inner cylinder configured to depart from the aperture and an outer cylinder encompassing the inner cylinder, on which the bowl is suspended by the grid bars of the bowl cupola in such a way that, when the feed delivery pipe is lowered, the bowl comes to rest on the floor of the coop, wherein the outer cylinder is guided in a rotatable manner as well as in a raisable and lowerable manner on the inner cylinder, and at least one lifting stop is provided for delimiting a lifting and lowering path of the bowl (see paragraphs 0002 - 0003).

AAPA fails to teach the downpipe includes at least one rotational stop delimiting a rotational path of the outer cylinder in relation to the inner cylinder; and wherein the outer

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cylinder features at least one spring-elastic engagement cam and the outer surface of an upper cylinder of the outer cylinder includes a threaded spindle, and that free ends of the grid bars of the bowl cupola are connected to a screw ring which is screw onto the outer cylinder having the threaded spindle.

Runion discloses it is known to have at least one rotational stop (44, 54, 70, 72, 74, 76, 78) delimiting a rotational path of an outer cylinder (50, 52) in relation to an inner cylinder (figure 20) wherein the outer cylinder features at least one spring elastic engagement cam (74, 76) that extends through portions of a screw ring.

Swartzendruber discloses that it is known to have the outer surface of an upper cylinder of the outer cylinder includes a threaded spindle (figure 7), and that free ends of the grid bars of the bowl cupola are connected to a screw ring (50, figure 7) which is screwed onto the outer cylinder having the threaded spindle.

All the component parts are known in AAPA, Swartzendruber, and Runion. The only difference is the combination of the old elements into a single device by incorporating them into a feeder bowl system.

Thus, it would have been obvious to one having ordinary skill in the art to incorporate at least one rotational stop into the feeder of AAPA as shown in Runion and also provide the outer cylinder with a threaded spindle as shown in Swartzendruber because the rotational stop and threaded spindle could be used in combination with the standard feeder device in AAPA to achieve the predictable results of providing a rotational stop when needed while also allowing for threaded rotation of the cylinder with ring and bowl cupola for adjusting feed levels.

9. Regarding claims 25, 45, and 65, AAPA, as modified, discloses the apparatus as claimed above wherein each engagement cam is spring elastic in a radial direction (figure 2, Runion).

10. Regarding claims 26, 46, and 66, AAPA, as modified, discloses the apparatus as claimed above, comprising a screw ring of the bowl cupola includes cut-outs on its inner circumference surface with which the engagement cams are capable of engaging with positive fit (see Runion figure 2, the interior holes on the screw ring which the engagement cams fit through).

Claims 36, 37, 56, 57, 76, and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Runion as applied above, and further in view of Van Zee et al. (US 5,097,797).

11. Regarding claims 36, 37, 56, 57, 76, and 77, AAPA, as modified, discloses the apparatus as claimed above, but fails to teach of a ring surface in the plate that is subdivided into feeding sections each being a pocket delimited by depression or elevation.

Van Zee et al. discloses a feed plate with a ring surface subdivided into feeding section being pockets with depression or elevation (80, figures 1 – 4).

Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify AAPA to comprises of a feed plate subdivided into pockets to further reduce the amount of feed in a restricted feeding mode as taught by Van Zee (col 2, lines 15 – 20).

Response to Arguments

Applicant's arguments with respect to claims 20, 40, and 60 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua J. Michener whose telephone number is 571-272-1467. The examiner can normally be reached on Monday through Friday 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joshua J Michener
Examiner
Art Unit 3644

jjm



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